

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ELLEN GOBER,	:	NO. 1:10-CV-00532,
	:	
Plaintiff,	:	
	:	
v.	:	OPINION AND ORDER
	:	
Commissioner of Social	:	
Security,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's June 20, 2011 Report and Recommendation (doc. 12), to which no objections were filed. For the reasons indicated herein, the Court AFFIRMS the Magistrate Judge's recommended decision and ADOPTS the Magistrate Judges' Report and Recommendation in all respects, VACATES the decision of the Administrative Law Judge as it was not supported by substantial evidence, and REMANDS this case for further proceedings consistent with this opinion.

The procedural and factual background of this case are well-detailed in the Magistrate Judge's Report and Recommendation, and the Court will not reiterate it here. In brief, however, Plaintiff applied for disability insurance benefits on September 17, 2004, alleging disability since January 15, 1999, due to a brain abscess, depressive disorder, anxiety disorder, cognitive disorder and hemianopsia (doc. 12). On October 25, 2007, the Administrative Law Judge ("ALJ") issued a decision denying Plaintiff's application, a determination that Plaintiff

subsequently unsuccessfully appealed (Id.). Plaintiff then sought review from this Court. The Magistrate Judge reviewed the record and in her June 20, 2011 Report and Recommendation concluded that the ALJ erred in assessing Plaintiff's visual impairment at step two of the sequential evaluation process; in assessing Plaintiff's residual function capacity; in evaluating the medical evidence of record (specifically Plaintiff's treating optometrists); and in assessing Plaintiff's credibility (doc. 12). The Magistrate Judge then recommended that the case be remanded for further proceedings (Id.).

No objections to the report and recommendation of the Magistrate Judge were filed, and the Court finds no clear error in the record. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985)("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). On the contrary, the Court finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct. Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 12), VACATES the decision of the ALJ that Plaintiff be denied disability benefits, REMANDS this matter to the ALJ for proceedings consistent with this opinion, and DISMISSES this case from the Court's docket. On remand, as the Magistrate

Judge recommended, the ALJ should properly evaluate Plaintiff's visual impairment based on the evidence of record; properly determine the weight to be given to the opinions of Plaintiff's treating physicians, including Plaintiff's treating optometrists, and articulate the rationale in support thereof; reconsider Plaintiff's residual function capacity and credibility; and accurately portray Plaintiff's impairments when questioning the vocational expert. On the record presented, the Court is inclined to immediately award benefits in this case. However, as the Magistrate Judge noted, all essential factual issues have not yet been resolved, and the record does not adequately establish Plaintiff's entitlement to benefits as of her alleged onset date. See Faucher v. Sec'y of Health and Human Servs., 17 F.3d 171, 176 (6th Cir. 1994). The ALJ should ensure that those matters are addressed on remand.

SO ORDERED.

Dated: July 20, 2011

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge

